

(5) If it decides to vacate an agreement of resolution upon the selection of a member of the class pursuant to § 268.305(f)(4) of this part;

(6) Within 60 days of receiving findings and recommendations of an administrative judge following a class action hearing pursuant to the procedures stated under § 268.305(i) of this part;

(7) Within 90 days of receipt of a written claim by a class member pursuant to § 268.305(k)(3) of this part; or

(8) Within 30 days of receiving the EEOC decision pursuant to § 268.405(c) of this part.

(c) The final decision of the Board shall consist of findings by the Board on the merits of each issue in the complaint, or following review by the Commission, the reason or reasons for acceptance, modification or rejection of each finding in an EEOC decision. When discrimination is found and indicated in the final decision, appropriate remedies and relief in accordance with subpart E of this part will be addressed in the final decision.

(d) The final decision shall contain information regarding the right to file a request for review with the Commission of final decisions pursuant to paragraphs (b)(1) through (7) of this section and the procedures for filing a request for review with the Commission, the right to file a civil action in a United States District Court, including the name of the proper defendant in any such lawsuit, and the applicable time limits for reviews and lawsuits. A copy of EEOC Form 573, Notice of Appeal/Petition, shall be attached to the final decision pursuant to paragraphs (b)(1) through (7) of this section.

Subpart C—Provisions Applicable to Particular Complaints

§ 268.301 Age Discrimination in Employment Act.

(a) As an alternative to filing a complaint of discrimination on the basis of age under this part, an aggrieved person may file a civil action in a United States District Court against the Board of Governors. The aggrieved person must give notice of his or her intent to file such action with the Commission, with a copy to the Board's

EEO Programs Director, not less than 30 days prior to filing such civil action. The notice must be filed in writing with the Commission: Federal Sector Programs, Equal Employment Opportunity Commission, 1801 L Street, NW, Washington, DC 20507, within 180 days of the occurrence of the alleged unlawful practice.

(b) The Commission may exempt a position from the provisions of the ADEA if the Commission establishes a maximum age requirement for the position on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position. The Board may adopt a Commission exemption for inclusion under this section.

(c) When an aggrieved person has filed a complaint under § 268.205 or § 268.305 of this part alleging age discrimination, administrative remedies will be considered to be exhausted for purposes of filing a civil action:

(1) 180 days after the filing of an individual complaint if the Board has not issued a final decision and the complainant has not filed a request for review by the Commission, or 180 days after the filing of a class complaint if the Board has not issued a final decision;

(2) After the issuance of a final decision under § 268.209 of this part on an individual or class complaint if the individual has not filed a request for review with the Commission; or

(3) After the issuance of a final decision under § 268.209(b)(8) following an EEOC decision under § 268.405 of this part, or 180 days after the filing of a request for review under subpart D of this part if the Commission has not issued an EEOC decision.

[59 FR 16098, Apr. 6, 1996, as amended at 61 FR 13079, Mar. 26, 1996]

§ 268.302 Equal Pay Act.

(a) Any employee who believes he or she has received unequal pay due to discrimination based on sex may seek recovery of withheld wages by filing a complaint of discrimination under subpart B of this part, if a complaint of individual discrimination, or under § 268.305 of this part if a class action, except that civil actions shall be filed

pursuant to paragraph (b) of this section.

(b) A complainant, agent of the class or individual class claimant under this section may file a civil action against the Board pursuant to §268.506 of this part in a United States District Court should the complainant, agent of the class or individual class claimant believe he or she has been denied equal pay.

(c) The Board shall preserve any records that are made in the regular course of business which relate to the payment of wages, wage rates, job evaluations, job descriptions, merit systems, seniority systems, description of practices, or other matters which describe or explain the basis for payment of any wage differential to employees of the opposite sex, and which may be pertinent to the determination of whether such differential is based on a factor other than sex. Such records are to be kept for at least 3 years.

(d) Wages withheld in violation of §268.202(c) of this part have the status of unpaid minimum wage or unpaid overtime compensation.

§268.303 Rehabilitation Act.

(a) *General policy.* The Board shall give full consideration to the hiring, placement and advancement of qualified individuals with a disability who are physically or mentally disabled. The Board shall be a model employer of individuals with a disability. The Board shall not discriminate against individuals with a disability who are physically or mentally disabled.

(b) *Reasonable accommodation.* (1) The Board shall make reasonable accommodation to the known physical or mental limitations of an employee or applicant for employment who is a qualified individual with a disability unless the Board can demonstrate that the accommodation would impose an undue hardship on its operations.

(2) Reasonable accommodation may include, but shall not be limited to:

(i) Making facilities readily accessible to and usable by individuals with a disability; and

(ii) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modi-

fication of examinations, the provision of readers and interpreters, and other similar actions.

(3) In determining whether, pursuant to paragraph (b)(1) of this section, an accommodation would impose an undue hardship on the operation of the Board, factors to be considered include:

(i) The overall size of the Board's operations with respect to the number of employees, number and type of facilities and size of budget;

(ii) The type of Board operation, including the composition and structure of the Board's work force; and

(iii) The nature and the cost of the accommodation.

(c) *Employment criteria.* (1) The Board shall not make use of any employment test or other selection criterion that screens out or tends to screen out qualified individuals with a disability or any class of individuals with a disability unless:

(i) The test score or other selection criterion is job-related for the position in question and consistent with business necessity; and

(ii) There are no available alternative job-related tests that do not screen out or tend to screen out as many individuals with a disability.

(2) The Board shall select and administer tests concerning employment so as to insure that, when administered to an employee or applicant for employment who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the employee's or applicant's ability to perform the position or type of position in question rather than reflecting the employee's or applicant's impaired sensory, manual, or speaking skill (except where those skills are the factors that the test purports to measure).

(d) *Pre-employment inquiries.* (1) Except as provided in paragraphs (d)(2) and (3) of this section, the Board shall not conduct a pre-employment medical examination and shall not make pre-employment inquiry of an applicant as to whether the applicant is an individual with a disability or as to the nature or severity of a disability. The Board may, however, make pre-employment inquiry into an applicant's ability to meet the essential functions of the job, or the medical qualification